

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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DIRECTOR

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	
	)	
Worldcom, Inc. d/b/a MCI	)	
	)	
Petition for Temporary, Limited Waiver	)	
	)	

### ORDER

Adopted: September 30, 2003

Released: October 1, 2003

By the Chief, Consumer & Governmental Affairs Bureau:

## I. INTRODUCTION

1. On June 26, 2003, the Federal Communications Commission (Commission) adopted rules prohibiting telemarketers from abandoning more than three percent of calls answered by a live person and requiring telemarketers to deliver a prerecorded identification message when abandoning any call.<sup>1</sup> In this Order, we grant Worldcom, Inc. d/b/a MCI (MCI) a 60-day waiver until December 1, 2003 of the prerecorded identification message requirement in 47 C.F.R. § 64.1200(a)(6).<sup>2</sup> We grant this limited waiver to afford MCI an additional 60 days within which to satisfy their obligations under the Commission's "call abandonment" rules.

2. In the *Report and Order*, the Commission found that various technologies are widely used by telemarketers to contact greater numbers of consumers more efficiently.<sup>3</sup> The Commission also noted that the use of one such technology—predictive dialing software—may result in a significant number of abandoned calls. To minimize the harm that results from the use of predictive dialers, the Commission adopted a rule requiring telemarketers to ensure that any technology used to dial telephone numbers abandons no more than three (3) percent of calls answered by a person, measured over a 30-day period.<sup>4</sup> Section 64.1200(a)(6) provides that a call will be considered abandoned if it is not transferred to a live sales agent within two (2) seconds of

<sup>1</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014 (2003) (*Report and Order*).

<sup>2</sup> See Petition for Temporary, Limited Waiver of Section 64.1200(a)(6) of the Commission's Rules, filed by MCI, August 27, 2003 (*Waiver Request*).

<sup>3</sup> *Report and Order*, 18 FCC Rcd at 14101, para. 146.

<sup>4</sup> See 47 C.F.R. § 64.1200(a)(6).

the recipient's completed greeting. The Commission's rules further require that when a call is abandoned within the three (3) percent maximum allowed, a telemarketer must deliver a prerecorded identification message containing only the telemarketer's name, telephone number, and notification that the call is for "telemarketing purposes."<sup>5</sup> Finally, section 64.1200(a)(6) requires a telemarketer to maintain records demonstrating compliance with the three percent call abandonment rate. The "call abandonment" rules are scheduled to become effective on October 1, 2003.<sup>6</sup>

3. On August 27, 2003, MCI filed a petition seeking a 60-day waiver of the requirement that it comply with section 64.1200(a)(6). In the alternative, MCI requests that the Commission waive only the prerecorded identification message requirement of Section 64.1200(a)(6).<sup>7</sup> On September 4, 2003, the Consumer & Governmental Affairs Bureau released a Public Notice seeking comment on MCI's petition.<sup>8</sup> The Commission received comments from AT&T Corp. (AT&T) and Dennis C. Brown (Brown) regarding MCI's waiver request.<sup>9</sup> AT&T disputes MCI's contention that it lacked adequate notice of the Commission's call abandonment rules and contends that MCI's petition fails to show that compliance by the October 1 deadline imposes any unique or extraordinary burdens on MCI.<sup>10</sup> Brown contends that MCI was on notice of the Commission's rules since the release of the Commission's Notice of Proposed Rulemaking in September of 2002, and that there are reasonable alternatives to a waiver for MCI.<sup>11</sup>

4. Because we conclude that, under the circumstances presented, it is in the public interest to do so, we grant MCI a 60-day limited waiver of the requirement to deliver a prerecorded identification message when abandoning a call. MCI will still be required to comply with the three (3) percent maximum rate on abandoned calls as of the rule's scheduled effective date of October 1, 2003.

## II. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.<sup>12</sup> As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.<sup>13</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>14</sup> The Commission may take into account

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<sup>5</sup> *Id*

<sup>6</sup> *See Report and Order*, 18 FCC Rcd at 14110, para. 159.

<sup>7</sup> *Waiver Request* at 6.

<sup>8</sup> Public Notice, Consumer & Governmental Affairs Bureau Seeks Comment on MCI Petition for Temporary, Limited Waiver of the Commission's Call Abandonment Rules, DA 03-2832 (rel. September 4, 2003).

<sup>9</sup> *See* AT&T Comments, filed September 11, 2003; Comments and Opposition to Petition for Temporary Limited Waiver of Section 64.1200(a)(6) of the Commission's Rules, filed by Dennis C. Brown, September 5, 2003; *see also* MCI Reply Comments, filed September 18, 2003.

<sup>10</sup> *See* AT&T Comments at 4.

<sup>11</sup> *See* Dennis C. Brown Comments at 4.

<sup>12</sup> 47 C.F.R. § 1.3.

<sup>13</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert denied*, 409 U.S. 1027 (1972).

<sup>14</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>15</sup>

6. We find that MCI has demonstrated that good cause exists to justify a temporary, limited waiver until December 1, 2003, of the Commission's prerecorded identification message requirement in section 64.1200(a)(6). Although the Federal Trade Commission (FTC) adopted similar requirements regarding abandoned calls in December 2002, the FTC's rules apply only to companies over which it has jurisdiction.<sup>16</sup> The FTC granted an extension of the effective date of its call abandonment rules until October 1, 2003, after determining that it would take additional time for companies to acquire or develop new software and hardware to comply with its rules.<sup>17</sup> Thus, most companies have had nine months to make the necessary modifications to comply with the FTC's rules. As a common carrier that uses internal call centers for its telemarketing, however, MCI is not subject to the FTC's jurisdiction and is therefore not required to comply with its rules.<sup>18</sup> Consequently, although we recognize that MCI was aware that it could be subject to a similar requirement,<sup>19</sup> it could not be certain of the contours of the rules that would apply to it until the Commission's decision.

7. In addition, it appears that compliance with the call abandonment rule by October 1, 2003 presents a complex problem for MCI because of the requirement that MCI both track the call abandonment rate and deliver a prerecorded identification message if the called person is not connected with a live sales representative within two seconds.<sup>20</sup> According to MCI, the current method used by MCI to track abandoned calls—based on the "termination call progression event"—cannot be used to comply with the Commission's new rule because of the additional requirement that MCI deliver a prerecorded message.<sup>21</sup>

8. We find that MCI has demonstrated that a temporary, limited waiver of the prerecorded identification message requirement is in the public interest. According to MCI's *Waiver Request*, MCI is in the process of modifying its equipment to comply with the Commission's new rules, but will likely not be able to comply with the "call abandonment" rule by October 1.<sup>22</sup> MCI explains that it has taken steps to design and put in place new software and hardware that will allow it to calculate the percentage of abandoned calls based on indicia other than the "termination call progression event" that occurs after disconnection, and to purchase new

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<sup>15</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>16</sup> See *Telemarketing Sales Rule*, 68 Fed. Reg. 4580, 4587 (Jan. 29, 2003).

<sup>17</sup> See *Telemarketing Sales Rule*, Federal Trade Commission, Stay of Compliance Date, 68 Fed. Reg. 16414, 16414-15 (April 4, 2003).

<sup>18</sup> The FTC lacks jurisdiction over certain entities, including common carriers, banks, insurance companies, and airlines. The FTC indicated, however, that its amended rules will apply to third party telemarketers hired by such entities to call on their behalf.

<sup>19</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 17 FCC Rcd 17459, CG Docket No. 02-278 and CC Docket No. 92-90 (2002).

<sup>20</sup> See *Waiver Request* at 3.

<sup>21</sup> See *Waiver Request* at 3-4.

<sup>22</sup> See *Waiver Request* at 6.

equipment to deliver the prerecorded message.<sup>23</sup> Such software is still in the design stage, and the new hardware is currently being sized to accommodate the necessary data storage and message presentation.<sup>24</sup> MCI states, however, that it could comply with the three percent call abandonment rate by using its temporary, manual, data collection system, provided that MCI were relieved of the obligation to leave a prerecorded message.<sup>25</sup> Therefore, we find that a temporary, limited waiver is reasonable to provide MCI with additional time to complete the steps necessary to comply with section 64.1200(a)(6).

9. In addition, a 60-day waiver of only the prerecorded message requirement of section 64.1200(a)(6) should result in minimal harm to consumers. The waiver may result in some consumers not receiving the prerecorded identification message from MCI for an additional 60 days. Consumers should nevertheless experience a reduction in the number of abandoned calls, as MCI has indicated that it can comply with the Commission's three percent call abandonment rate by October 1, 2003, if it uses its temporary, manual data collection system.<sup>26</sup> We expect that MCI will use its best efforts to comply also with the prerecorded identification message requirement by October 1, or as soon as possible within the 60-day waiver period.<sup>27</sup>

10. For the foregoing reasons, we grant MCI a 60-day waiver until December 1, 2003, of the requirement to deliver a prerecorded identification message when abandoning a call. MCI will still be required to comply with all other requirements as provided in Section 64.1200(a)(6) by the scheduled effective date of October 1, 2003.

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<sup>23</sup> *Waiver Request* at 4.

<sup>24</sup> *See Waiver Request*, Declaration of Randy Hicks on Behalf of MCI, at 3-4.

<sup>25</sup> MCI asserts that compliance in this manner would be considerably more burdensome for MCI. *See Waiver Request* at 6.

<sup>26</sup> *See MCI Reply Comments* at 8, n. 32.

<sup>27</sup> *See Waiver Request* at 6.

### III. ORDERING CLAUSES

11. Accordingly, pursuant to authority contained in Sections 1, 4 and 227 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 227, and the authority delegated under sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.3, the waiver request relating to 47 C.F.R. § 64.1200(a)(6) filed by Worldcom, Inc. d/b/a MCI on August 27, 2003 IS GRANTED until December 1, 2003, to the extent indicated herein.

12. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "K. Dane Snowden", with a large, stylized initial "K" and a long, sweeping horizontal line extending to the right.

K. Dane Snowden  
Chief, Consumer & Governmental Affairs Bureau